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15235

(18,745.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 165.

THE GREAT SOUTHERN FIRE-PROOF HOTEL COMPANY, PETITIONER,

vs.

BENJAMIN F. JONES, GEORGE M. LAUGHLIN, BENJAMIN F. JONES, JR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 13, 1903.

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1 *Transcript of Record.*

UNITED STATES OF AMERICA,
Southern District of Ohio, Eastern Division, } ss:

At a stated term of the circuit court of the United States of America, within and for the eastern division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court rooms at the city of Columbus, Ohio, in said district, on the first Tuesday in June, being also the fourth day of the month, in the year of our Lord one thousand nine hundred and one, and of the American Independence the one hundred and twenty-fifth.

Present: The Honorable Albert C. Thompson, district judge.

Among the proceedings had were the following, to-wit:

BENJAMIN F. JONES ET AL., Complainants,
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY ET AL., Defendants.

Be it remembered, that heretofore, to-wit, on the 21st day of June, A. D. 1900, an entry was made upon the journal of said court, clothed in the words and figures following, to-wit:

Entry Journal D, page 336.

Entry.

This day, on application of complainants, leave is given complainants to file herein an amended bill of complaint in accordance with the decision of the supreme court hereinbefore rendered herein.

And at the same time, on application of defendants, Sosman & Landis, leave is hereby given said defendants to file herein an amended answer and cross-bill to the amended bill of complainants.

2 And afterwards, to-wit, on the 21st day of June, in the year of our Lord one thousand nine hundred, came the complainant herein, by its solicitors, and filed in the clerk's office of the court aforesaid its certain bill of complaint against the defendants herein, which said bill of complaint is clothed in the words and figures following, to-wit:

Amended Bill of Complaint.

To the honorable judges of the circuit court of the United States for the southern district of Ohio, eastern division, sitting in equity:

BENJAMIN F. JONES, GEORGE M. LAUGHLIN, BENJAMIN F. JONES, Jr., Mary F. Laughlin, Mary McM. Laughlin, Magdalaine F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin F. Jones and William L. Jones, Trustees under the Last Will and Testament of Thomas M. Jones, Jr., Deceased, for William L. Jones, Mary J. Hillard, and Thomas M. Jones, Jr., Partners Doing Business under the Firm Name and Style of Jones & Laughlins, Limited, Brings This Their Amended Bill of Complaint, Complainants,

vs.

THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY, a Corporation; The Akron Hydraulic Press Brick Company, a Corporation; Joseph Sosman and Jerry Landis, Partners Doing Business under the Firm Name and Style of Sosman & Landis; The American Blower Company, a Corporation; The United States Mortgage & Trust Company, a Corporation, and The Grand Rapids School Furniture Company, a Corporation, Defendants.

3 Your orators brings this their amended bill of complaint and say:

1st. Your orators, Benjamin F. Jones, George M. Laughlin, Benjamin F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madeline F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and each of them are members of and shareholders in the limited partnership association, or joint stock company doing business under the firm name and style of Jones & Laughlins, Limited, which said association is a limited partnership association organized under an act of the General Assembly of Pennsylvania, approved June 2d, 1874, entitled "An act authorizing the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances." The principal office and place of business of said association is in the city of Pittsburg, in the State of Pennsylvania.

On the — day of April, 1899, Thomas M. Jones, then and at all times hereinafter mentioned having been a citizen of the State of Pennsylvania, died a member of and owner of certain shares in said limited partnership association, and leaving a last will and testament by which he devised and bequeathed to your orators, Benjamin F. Jones and William L. Jones, and to Annie E. Jones, all of his stock and interest in said limited partnership association, to be held

in trust for William L. Jones, Mary J. Hillard and Thomas M. Jones, Jr., until the 3d day of August, 1903. Said Annie E. Jones has since deceased, and your orators, Benjamin F. Jones and William E. Jones, are the sole surviving trustees under said will, and are now duly qualified and acting as such, and as such trustees hold the interest of said Thomas M. Jones in said firm in trust for said persons, and as such trustees are members of and shareholders in said limited partnership association of Jones & Laughlins, Limited, and are and at all times hereinafter mentioned have been citizens of the State of Pennsylvania, and their *cestuis qui trustant* William L. Jones, Mary J. Hillard and Thomas M. Jones, Jr., are also, and at all times hereinafter mentioned have been citizens of the State of Pennsylvania.

Your orators, Benjamin F. Jones, George M. Laughlin, Benjamin F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madelaine F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza Phillips, and Ben-
4 jamin F. Jones, and William L. Jones, trustees under the last will and testament of Thomas M. Jones, deceased, for William L. Jones, Mary J. Hillard and Thomas M. Jones, Jr., are all of the members and shareholders of said limited partnership association, and your said orators and each of them are now, and at all times hereinafter set out, have been citizens of the State of Pennsylvania.

The defendant, The Great Southern Fire Proof Hotel Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, and has its principal office of business in the city of Columbus, and county of Franklin in the said State, and in the eastern division of the southern district of the United States court of Ohio, and is a citizen of the said city of Columbus, and State of Ohio, and in the eastern division of the southern district of said court.

The defendant, The Akron Hydraulic Press Brick Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri, and is a citizen thereof.

The defendants, Joseph Sosman and Perry Landis, are partners doing business under the firm name and style of Sosman & Landis, and are each residents of the city of Chicago, in the State of Illinois, and are, and have been, at all times hereinafter mentioned, citizens of said State of Illinois.

The defendant, The American Blower Company, is a corporation organized and existing under the laws of the State of Michigan, and is a citizen of the State of Michigan.

The defendant, The United States Mortgage & Trust Company, is a corporation organized and existing under and by virtue of the laws of the State of New York, and is a citizen of the said State.

The defendant, The Grand Rapids School Furniture Company, is a corporation organized under the laws of the State of Michigan, and is a citizen of the said State of Michigan.

2d. Your orators further say that the amount in controversy in

this case is more than two thousand dollars, exclusive of costs and interest.

3d. Your orators further say that on the 13th day of December, 1894, they made and entered into a certain written contract with one William J. McClain, a copy of which contract is hereto*fore* attached and marked Exhibit "A;" that said William J. McClain for some time prior to and at said time was engaged as principal con-
5 tractor for the defendant, The Great Southern Fire Proof Company, in erecting and constructing for the said The Great Southern Fire Proof Hotel Company a six-story fire-proof hotel and opera-house or theatre on the premises hereinafter described, under and by virtue of the certain written contract with said The Great Southern Fire Proof Hotel Company, in which said contract the said McClain agreed and *constructed* as such principal contractor to construct and complete said fire-proof hotel and opera-house for said company, for the sum of $345,000. That by the terms of the said written contract made and entered into by your orators and the said William J. McClain the terms of which contract are herein set out in Exhibit "A," it was provided that your said orators should furnish the said William J. McClain with nine hundred tons of structural steel for the Great Southern Fire Proof Hotel Company, for the said hotel in the city of Columbus, and State of Ohio, said structural steel to be fitted and ready for erection; said structural steel to be so furnished for the sum of $32,500, delivered f. o. b. cars, Columbus.

Your orators further say that it was further provided in said contract if an additional quantity of structural steel should be required by the said William J. McClain, more than the nine hundred tons provided for in said written contract, your orators were to furnish the said William J. McClain with the said additional structural steel at the rate of $1.81 per one hundred pounds; that if an amount of structural steel less than the said nine hundred tons should be required by the said William J. McClain for the purpose stated in said written contract, then your said orators were to allow the said William J. McClain a reduction from the said contract price for said structural steel at the rate of $1.81 per one hundred pounds, for the difference between the structural steel actually shipped and the said nine hundred pounds provided for in said contract.

Your orators further say that it was still further provided in said contract that your said orators were to commence the shipping of said structural steel at once, and that the order for the same should be completed by your orators before the first day of August, 1895.

Your orators still further say that it was still further provided for in said written contract that the payments to your said orators by the said William J. McClain for the structural steel provided for in said written contract were to be cash payments, the same to be made on the fifth day of the month following the shipment of said steel.

6 4th. Your orators further say that in pursuance of the terms and conditions of said written contract and in strict compliance therewith, your orators between the 16th day of April,

1895, and the 29th day of January, 1896, shipped to and furnished the said William J. McClain with structural steel to the value of $43,296.74, as per an itemized account hereto attached and marked Exhibit "B," which said structural steel so furnished was all used in and about the construction of said The Great Southern fire proof hotel and opera-house in the city of Columbus, and State of Ohio. And your orators say that they have fully kept and performed all the terms and conditions of said written contract on their part to be kept and performed.

5th. Your orators further say that they have received from the said William J. McClain on said written contract the sum of $31,886.72, leaving a balance still due your orators from said William J. McClain for materials furnished him, and labor performed for him under and according to the terms of said written contract the sum of $11,410.02, with interest thereon from the 28th day of January, 1896.

6th. Your orators further say that on the 11st day of August, 1896, the said William J. McClain made and filed in the probate court of Franklin county, Ohio, a deed of assignment for the benefit of his creditors to F. Bert Milligan, assignee; that said Wm. J. McClain is wholly insolvent and unable to pay the claims of said creditors, including the said claims of your said orators.

7th. That on the 21st day of April, 1896, at 4.50 o'clock p. m., within four months after having furnished said material and having performed said labor under and according to the terms of said written contract, your orators duly filed with the recorder of Franklin county, Ohio, an affidavit, containing an itemized statement of the amount and value of said materials furnished and labor performed according to the terms of said written contract between your orators and the said William J. McClain, with all credits thereon, together with a copy of said written contract with the said William J. McClain under which written contract the said material was so furnished and the said labor was so performed; and also, a description of the premises upon which the said The Great Southern fire proof hotel and opera-house was situate, which said affidavit was thereafter recorded in Book No. 9, pages 99, 100, 101, of the records of liens of said Franklin county, Ohio, and that upon said 2d
7 day of April, 1896, there was due your said orators upon said account from the said William J. McClain the sum of $11,140.02, with interest thereon from the 28th day of January, 1896.

8th. Your orators further say that the said affidavit was so filed with the said recorder of Franklin county, Ohio, in compliance with the terms and provisions of section 3184 as amended April 13th, 1894, and 3185 of the Revised Statutes of the State of Ohio.

9th. Your orators further say that the premises upon which said fire-proof hotel and opera-house building is located are in the county of Franklin, State of Ohio, and in the city of Columbus, and bounded and described as follows:

In lots Nos. 352, 353, 354, said premises being 187½ feet square,

bounded on the north by Main street, on the east by Pearl street, on the south by Noble street, and on the west by High street, in the city of Columbus, and State of Ohio.

10th. Your orators further say that the material so furnished and the labor so performed in accordance with the terms and conditions of said written contract between your orators and the said William J. McClain constitute a part of the improvement provided for in the contract between the said William J. McClain, the principal contractor, and the said defendant, The Great Southern Fire Proof Hotel Company, for the erection of said building, and that the same was and is a part of said building.

11th. Your orators further allege that by reason of the premises their said claim became a valid and subsisting lien on the said The Great Southern fire proof hotel and opera-house, and the tract of land on which the said — is situated and heretofore described, from the 17th day of April, 1895, the date when said labor was commenced, and said material furnished, for the sum of $11,140.02, with interest thereon from the 28th day of January, 1896, the amount now remaining due and unpaid upon your orator's said claim from the said William J. McClain.

12th. Your orators further say that the said opera-house or theatre in said building was completed on or about the 15th day of September, 1896, since which time the defendant, The Great Southern Fire Proof Hotel Company has been and is now receiving as annual rental therefor the sum of $6,500, payable in monthly installments of $541.66⅔ each; that all of the store rooms in said building are now completed and all have been leased to various parties
8 and are now occupied by the said parties at annual rentals, the amount of which is unknown to your orators; that said hotel building is now completed, and that the said defendant, The Great Southern Fire Proof Hotel Company, is negotiating with and about to lease the same to parties, the names of which are unknown to your orators, and the annual rent to be paid for the same by said parties is also unknown to your orators.

13th. Your orators further say that the property heretofore described is probably insufficient to pay the encumbrances thereon, and the appointment of a receiver for the collection of all the rents therefrom is necessary for the protection and preservation of the rights of your orators herein and all other lienholders thereof.

14th. Your orators further say that the defendants, The Akron Hydraulic Press Brick Company, Sosman & Landis, The United States Mortgage & Trust Company, The American Blower Company and The Grand Rapids School Furniture Company, and each claim to have some interest in the said property of the defendant, The Great Southern Fire Proof Hotel Company, as lienholders or otherwise, — the exact nature and extent of which interest your orators are now advised, and cannot, therefore, more definitely state.

And thereupon your orators pray that the said defendants may — require- to answer herein and to fully set forth their respective claims in the premises and in any default thereof they may be forever

barred from asserting any claim whatsoever against said property or any part thereof.

Wherefore your orators respectively pray that a receiver may be appointed herein by your honors to collect all of said rents from the completed portions of said building, so rented as aforesaid, and also all rents which may hereafter accrue by reason of any new leases granted by the said hotel company, and that said receiver be ordered to hold said moneys so collected, subject to the order of your honors herein; that the said claim of your orators against the said William J. McClain be declared by your honors to be a valid and subsisting lien on the premises of the said defendant, The Great Southern Fire Proof Hotel Company, by virtue of said proceedings; that all of the liens on said property be marshaled, and that said premises be sold that your orators' claim may be satisfied from the proceeds of said sale, and that your orators may have such other and further relief as the nature of the case may require and to your honors seem meet.

9 May it please your honors to grant your orators a writ of subpœna, directed to the said defendants, commanding each of them at a certain time, under a certain penalty therein to be named, to be and appear before your honors in this honorable court, and then and there to answer all and singular the matters aforesaid, but not under oath, their answer under oath being waived, and to stand, abide by and perform all such other and further orders and decrees herein as to your honors shall seem meet, and your orators will ever pray, etc.

BENJAMIN F. JONES,
GEORGE M. LAUGHLIN,
BENJAMIN F. JONES, JR.,
MARY F. LAUGHLIN,
MARY McM. LAUGHLIN,
MADELINE F. LAUGHLIN,
WILLIS L. KING,
HENRY A. LAUGHLIN,
JAMES LAUGHLIN, JR.,
JAMES B. LAUGHLIN,
CHARLES C. BRIGGS,
ELIZA L. PHILLIPS, AND
BENJAMIN F. JONES AND
WILLIAM L. JONES,

Trustee under the Last Will and Testament of Thomas M. Jones, Deceased, for William L. Jones, Mary J. Hillard, and Thomas M. Jones, Jr.,

By OUTHWAITE, LINN & THURMAN,
Their Solicitors.

EXHIBIT "A."

"COLUMBUS, O., *Dec.* 13, 1894.

W. J. McClain, Columbus, Ohio.

DEAR SIR: We agree to furnish you with nine hundred (900) tons structural steel for the Great Southern hotel, Columbus, O., fitted ready for erection, in accordance with the revised plans and specifications, for the sum of thirty-two thousand five hundred and eighty ($32,580.00) dollars, delivered f. o. b. cars, Columbus.

We also further agree that if an additional quantity of steel is required more than nine hundred tons above specified, that he will furnish the same at the rate of $1.81 per hundred pounds, delivered at Columbus, or, if a less amount is required than the 900 tons, then we will allow a reduction from the contract prices at the rate of $1.81 per hundred pounds for the difference between the amount shipped and the 900 tons above specified.

It is understood that we can commence shipment at once and that all of the order will be completed before August 1st, 1895.

Terms of payment are cash, to be paid on the fifth of month following shipment.

Yours truly,

(Signed) JONES & LAUGHLINS, LIMITED.
R. GERRY.

The above proposition is this day accepted.

(Signed) W. J. McCLAIN."

EXHIBIT "B."

PITTSBURG, PA., *Mar.* 21, 1896.

Mr. W. J. McClain, Columbus, Ohio, bought of Jones & Laughlins, Limited.

1895.			
April 17th,	mdse		545 10
April 22nd,	"		501 21
May 1st,	"		882 55
May 4th,	"		432 12
May 11th,	"		606 30
May 20th,	"		737 82
May 25th,	"		670 46
May 29th,	"		546 71
June 1st,	"		621 00
June 5th,	"		418 98
June 11th,	"		411 91
June 17th,	"		629 61
June 18th,	"		681 66
June 20th,	"		11 37

June 21st,	mdse	497 49
July 3rd,	"	766 83
July 13th,	"	513 25
July 17th,	"	618 24
July 20th,	"	632 12
July 29th,	"	520 59
August 2nd,	"	664 85
August 5th,	"	719 60
August 8th,	"	566 58
11		
August 12th,	"	453 04
August 16th,	"	507 19
August 20th,	"	830 85
August 26th,	"	823 71
August 28th,	"	1270 48
August 31st,	"	581 92
September 9th,	"	2368 40
September 10th,	"	681 08
September 14th,	"	934 66
September 20th,	"	461 75
September 26th,	"	606 56
September 28th,	"	636 72
October 1st,	"	15 42
October 3rd,	"	992 14
October 7th,	"	1616 69
October 9th,	"	1142 99
October 12th,	"	932 39
October 15th,	"	1126 28
October 16th,	"	489 14
October 17th,	"	694 92
October 19th,	"	922 39
October 23rd,	"	753 21
October 23rd,	"	1060 18
October 24th,	"	698 12
October 24th,	"	1 60
October 25th	"	701 66
October 28th,	"	892 92
October 29th,	"	612 70
October 31st,	"	759 76
November 4th,	"	650 05
November 6th,	"	847 17
November 7th,	"	584 07
November 11th,	"	519 72
November 21st,	"	668 81
November 25th,	"	790 36
November 26th,	"	495 29
December 3rd,	"	575 72
December 11th,	"	16 56
December 31st,	"	1054 31

1896.		
January 10th,	mdse.....	350 07
January 28th,	"	42
		43296 74

CREDITS.

1895.		
May 9th,	by cash.....	1046 31
June 10th,	" "	3875 96
12		
July 26th,	" "	3351 00
August 29th,	" "	3051 00
October 5th,	" "	10000 00
October 31st,	by mdse.....	24 50
November 21st,	" "	84
November 27th,	" "	1 17
November 27th,	" "	8 76
December 23rd,	by cash.....	10000 00
1896.		
March 20th,	by mdse. allowance.....	527 18
		31866 72
	Balance.....	$11410 02

And afterwards, to-wit, on the 17th day of July, A. D. 1900, the following demurrer was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Demurrer.

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

BENJAMIN F. JONES ET AL.
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY, a Corporation, *et al.* } No. 796.

Demurrer of the defendant The Great Southern Fire Proof Hotel Company to the amended bill of complaint of the complainants.

This defendant, The Great Southern Fire Proof Hotel Company, by protestation, not confessing or acknowledging all or any of the matter and things in the said complainants' amended bill to be true and in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said complainants have not in and by said amended bill

made or stated such a cause as doth or ought to entitle them or any of them to any such recovery or relief as is therein sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing on the said amended bill, this defendant demurs thereto
13 and prays the judgment of this honorable court whether it shall be compelled to make any answer to the said amended bill or any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf expended.

J. E. SATER AND
D. F. PUGH,
Solicitors for the Def't The Great Southern Fire Proof Hotel Company.

STATE OF OHIO, }
Franklin County, } ss:

Nicholas Schlee makes solemn oath and says that he is the president of the above named defendant corporation, The Great Southern Hotel Company, and that the foregoing demurrer is not interposed for delay.

NICHOLAS SCHLEE.

Sworn to before me and subscribed in my presence this 14th day of July, 1900.

[SEAL.] E. L. PEASE,
Notary Public in and for Franklin County, Ohio.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

J. E. SATER,
Of Counsel for the Defendant The Great Southern Fire Proof Hotel Company.

And afterwards, to-wit on the 5th day of December, A. D. 1900, the following entry was made on the journal of said court, clothed in the words and figures following, to-wit:

Entry Journal E, page 7.

BENJAMIN F. JONES ET AL., Complainant-,
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY ET AL., Defendant-.

Entry.

This day this cause comes on to be heard upon the demurrer of the defendant, The Great Southern Fire Proof Hotel Com-
14 pany, to the amended bill of the complainants herein, and the said defendant's several demurrers to the answers and cross-

bills to the said amended bill, filed herein by the defendants, Joseph S. Sosman and Perry Landis, doing business under the firm name and style of Sosman & Landis, The Grand Rapids School Furniture Company and The Akron Hydraulic Press Brick Company, and the court, after hearing the agument of respective counsel, and being sufficiently advised in the premises, overrules said several demurrers; to which overruling of the court the defendant excepts, and the exception is allowed.

And defendant, The Great Southern Fire Proof Hotel Company is given to the 5th day of December, 1900, rule day, in which to plead.

And afterwards, to-wit, on the 5th day of December, A. D. 1900, the following answer was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Answer.

In the Circuit Court of the United States, Southern District of Ohio, Eastern Division.

BENJAMIN F. JONES ET AL., Complainants,
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL Company *et al.*, Defendants. } No. 796. In Equity.

Answer of The Great Southern Fire Proof Hotel Company against the amended bill of complaint filed in this court — complainants.

To the honorable the judges of the circuit court of the United States of the southern district of Ohio, eastern division:

Respondent, The Great Southern Fire Proof Hotel Company, for answer to so much of said amended bill of complaint as it is advised it is necessary for it to answer, says that it is true that the complainants filed with the recorder of Franklin county, Ohio, on the 21st day of April, 1896, what purports to be an affidavit; and it is claimed by said complainants that it was filed under and pursuant to section 3185 of the Revised Statutes of Ohio; but it is not true
15 as alleged in said amended bill, that said affidavit contained an itemized statement of the amount and value of materials furnished and labor performed, under their alleged contract with William J. McClain; on the contrary, said affidavit contains no itemized statement of the amount and value of said materials and labor, and what purports to be an itemized statement, and is made part of said affidavit, only states that on certain days therein mentioned W. J. McClain bought of the complainants merchandise, with the value set opposite to each item; but it nowhere, and in no manner states or attempts to state, what was the character, kind or amount of the merchandise so bought; and said itemized statement does not

state, or attempt to state, the amount and value of any labor performed by said complainants for said W. J. McClain, under said contract; all of which will fully appear by reference to the copy of the said so-called itemized statement, which is attached as Exhibit "B" to said amended bill, and also by reference to a like copy thereof, which is herewith filed marked "Exhibit A" and made part of this answer.

Respondent, therefore, avers and insists that said complainants did not, on the 21st day of April, 1896, or at any other time, acquire and they did not have at any time since then, and they have not now, under the mechanics' statute of Ohio, a subsisting mechanics' lien upon the real estate of respondent, which is described in said amended bill, for the value of said materials furnished and labor performed by said complainants to and for the said W. J. McClain, under their said contract.

Respondent further says that the said affidavit, mentioned in said amended bill, was filed by complainants in said recorder's office, and complainants sought to acquire their alleged mechanics' lien, upon which they rely, on the respondent's said real estate pursuant to, and under the right which was conferred by the act of the General Assembly, passed April 13, 1895, (91 Ohio L., page 135).

But respondent says that said statute is, so far as it attempts to give a lien for materials or labor obtained by the contractor from the sub-contractor, material man or laborer, unconstitutional and void, in this, that it violates the inalienable right of enjoying liberty and acquiring property, granted by section one of the bill of rights of the constitution of the State of Ohio.

Respondent further says that on December 8, 1896, the supreme court of the State of Ohio, being the highest court of the State,
16 determined and adjudged that said statute, so far as it gave a lien on the property of the owner to sub-contractors, laborers and those who furnish machinery, material or tile to the contractor, was unconstitutional and void; because it contravened and violated the provisions of said first section of the said bill of rights of the constitution of Ohio—all of which will fully appear by reference to the decision and the opinion of the said court in the cases of Palmer and Crawford *vs.* Tingle, and Young *vs.* Lion Hardware Company, reported in 55 Ohio State Reports, 423.

Respondent is advised, and therefore shows, that said decision was rendered in cases which involved alleged rights under a State statute, and that it determined the validity of a State statute, under the constitution of the State of Ohio; wherefore, the United States courts should follow the said decision of the supreme court of Ohio.

Respondent, for these reasons, represents and submits that the complainants did not, on the 21st day of April, 1895, or at any other time, acquire; that they did not, at the commencement of this suit have, and that they have not now, a subsisting mechanics' lien on the said real estate belonging to this respondent, for the value of materials furnished and labor performed by them, under their said contract with the said William J. McClain, contractor.

Respondent further says that by this answer it seeks relief against the attempt on the part of the complainants to enforce against this respondent the said statute of Ohio, because the operation of said statute, if permitted, would take from this respondent its property without due process of law, and deny to it the equal protection of the law, in contravention and violation of the provisions of the Constitution of the United States, and especially contrary to, and in violation of, section 1 of article 14 of the amendments to the Constitution of the United States.

Respondent, having fully answered said amended bill, prays that the court may decree that the said act of the General Assembly of Ohio, passed April 13, 1895 (91 Ohio L., page 135), is unconstitutional and void; that this respondent be dismissed from this suit; that the complainant's amended bill and this suit may be dismissed, at their costs; that the respondent may recover its costs in its behalf in this suit expended, and that it may have such other and further relief as the nature of the case may require, and as to equity may appertain.

J. E. SATER AND
PUGH & PUGH,
Attorneys for Respondent.

17 STATE OF OHIO, } *ss:*
Franklin County, }

Frank E. Lauterbach, being duly sworn, says that he is the secretary of the Great Southern Fire Proof Hotel Company, duly authorized to make this affidavit; that he makes this affidavit as such officer on behalf of said company; that he has read the said answer, and knows the contents thereof; that the same is true to his own knowledge, except as to matters of opinion, and as to those matters he believes them to be true.

FRANK E. LAUTERBACH.

Sworn to before me by the said Frank E. Lauterbach, and by him subscribed in my presence, this 4th day of December, A. D. 1900.

[SEAL.] G. L. STOUGHTON,
Notary Public.

Tax 40c.

EXHIBIT "A."

PITTSBURGH, PA., *March* 21, 1896.

Mr. W. J. McClain, Columbus, Ohio, bought of Jones & Laughlin, Limited.

1895.		
April 17th,	mdse.....	$545 10
April 22,	"	501 21
May 1st,	"	882 55
May 4th,	"	432 12
May 11th,	"	606 30

May 20th,	mdse	737	82
May 25,	"	670	46
May 29,	"	546	71
June 1st,	"	621	00
June 5th,	"	418	98
June 11th,	"	491	91
June 17th,	"	629	61
June 18th,	"	681	66
June 20th,	"	11	37
June 21st,	"	498	49
July 3rd,	"	766	83
July 13th,	"	513	23
July 17th,	"	618	24
July 20th,	"	632	12
July 29th,	"	520	59
August 2nd,	"	664	85
August 5th,	"	719	60
August 8th,	"	566	58

18

August 12th,	"	453	04
August 16th,	"	507	19
August 20th,	"	830	85
August 26th,	"	823	71
August 28th,	"	1270	48
August 31,	"	581	92
September 9th,	"	2368	40
September 10th,	"	681	08
September 14th,	"	934	66
September 20th,	"	461	75
September 26th,	"	606	56
September 28th,	"	636	72
October 1st,	"	15	42
October 3rd,	"	892	14
October 7th,	"	1616	69
October 9th,	"	1142	99
October 12th,	"	932	39
October 15th,	"	1126	28
October 16th,	"	489	14
October 17th,	"	984	92
October 19th,	"	922	39
October 23rd,	"	753	21
October 23rd,	"	1060	18
October 24th,	"	698	12
October 24th,	"	1	61
October 25th,	"	701	66
October 28th,	"	892	92
October 29th,	"	612	70
October 31st,	"	759	76
November 4th,	"	650	05

November 6th,	mdse	847	17	
November 7th,	"	584	07	
November 11th,	"	519	72	
November 21st,	"	668	81	
November 25th,	"	790	36	
November 26th,	"	495	29	
December 3rd,	"	575	72	
December 11th,	"	16	56	
December 31st,	"	1054	31	
1896.				
January 10th,	"	350	07	43,296 74
January 28th,		42		

CREDITS.

1895.				
May 9th,	by cash	1046	31	
June 10th,	"	3875	96	
19				
July 26th,	"	3351	02	
August 29th,	"	3051	00	
October 5th,	mdse	10000	00	
October 31st,	"	24	50	
November 21st,	"	24	50	
November 27th,	"		84	
November 27th,	"	1	17	
December 23rd,	cash	8	76	
		10000	00	
1896.				
March 20th,	mdse. allowance	527	16	
				31,866 72

Balance $11,410 02

And afterwards, to wit, on the 31st day of December, A. D. 1901, the following replication was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Replication.

In the Circuit Court of the United States, Southern District of Ohio, Eastern Division.

BENJAMIN F. JONES, GEORGE M. LAUGHLIN, BENJAMIN F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madelaine F. Laughlin, William L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin F. Jones and William L. Jones, Trustees under the Last Will and Testament of Thomas M. Jones, Deceased, for William L. Jones, Mary J. Hilliards and Thomas M. Jones, Jr., Partners Doing Business under the Firm Name and Style of Jones & Laughlin, Limited, Complainants,

vs.

THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY, a Corporation; The Akron Hydraulic Press Brick Company, a Corporation; Joseph Sosman and Perry Landis, Partners Doing Business under the Firm Name and Style of Sosman & Landis; The Grand Rapids School Furniture Company, a Corporation; The American Blower Company, a Corporation, and The United States Mortgage & Trust Company, a Corporation, Defendants.

No. 796.

Replication of complainants in the above entitled cause to answer of The Great Southern Fire Proof Hotel Company, defendant.

20 These replicants, saving and reserving the advantages of exception to the manifold insufficiencies of said answer, for replication thereto say, that they will aver and prove their said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore, they pray relief as in said bill set forth.

OUTHWAITE, LINN & THURMAN,
Solicitors for Replicants.

And afterwards, to wit, on the 12th day of April, A. D. 1901, the following motion was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

JONES & LAUGHLIN, LIMITED, Complainant,
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY ET AL., Respondents.

Motion.

Now comes the defendant, The Great Southern Fire Proof Hotel Company, and shows to the court:

(1.) That the plaintiff lately filed his bill in this case against the defendant, who appeared thereto, and upon the 5th and 11th day of December, 1900, it filed its answers to the said bill and the cross-bills of the American Blower Company, the Akron Hydraulic Press Brick Company, and Sosman & Landis.

(2.) This defendant has since discovered some additional facts, which it could not have acquired knowledge of before by reasonable diligence, and it desires to amend its respective answers to the said cross-bill.

And, therefore, moves the court for leave to amend its answer by consent.

THE GREAT SOUTHERN FIRE PROOF HOTEL CO.,
By J. E. SATER &
PUGH & PUGH, *Its Attorneys.*

And afterwards, to wit, on the 15th day of April, A. D. 1901, the following entry was made on the journal of said court, clothed in the words and figures following, to wit:

21–34 Journal E, page 127.

BENJAMIN F. JONES ET AL.
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY *et al.* No. 796.

Leave to file amended answer in these cases is refused. The amendments are not material and come too late.

A. C. T.

35 And afterwards, to-wit, on the 27th day of June, A. D. 1901, the following opinion was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

BENJAMIN F. JONES ET AL., Complainant-,
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY, Defendant.
No. 796.

Cross-Bills Setting up Mechanics' Liens Submitted on Agreed Statements of Facts.

First. Jones and Laughlin.

A person who performs labor or furnishes material for the erection of a building shall save a lien, to secure payment therefor upon the building and upon the land upon which it stands. O. R. S., sec. 3184. The laws of Ohio prescribing the steps necessary
36 to be taken to obtain the lien have been greatly changed during the last fifty years, and now differ materially from the laws of many of the States, whose decisions in mechanics' lien cases have been cited by counsel.

In order to obtain a lien the person who performs the labor or furnishes material must, within four months of the time of performing such labor or furnishing such material, file with the county recorder an affidavit containing:

1. An itemized statement of the amount and value of such material or labor.
2. A description of any promissory note or notes given for such labor or material, with all credits and offsets thereon.
3. A copy of the contract, if it is in writing, a statement of the amount and times of payments to be made thereunder.
4. A description of the land.
5. And, by implication, the dates of the first and last items of labor performed, or material furnished.

And the affidavit, when recorded, shall operate as a lien, from the date of the first item of the labor performed or material furnished, on the building and land, for six years, from and after the date of the filing of such attested statement.

The statute requires that the "itemized statement" shall show the amount and value of the labor or material. It appears from the affidavit that material was furnished for the construction of the building, and that it was furnished in pursuance of the contract, a copy of which is embodied in the affidavit, and it appears from the contract that the material so furnished was structural steel. The itemized statement shows the date of the delivery of the steel, the value of each delivery, and, although the amount of each delivery is not expressly stated, yet it can be ascertained from the terms of the contract, having the value of each delivery and the contract price per one hundred pounds, the amount of each delivery is easily ascertained. The amount, therefore, is stated with sufficient certainty for *id certum est quod reddi potest.*

Second. Sosman and Landis.

The copy of the contract embodied in the affidavit shows that

Sosman and Landis agreed to supply certain scenery, stage work, fixtures and properties as set forth in detail in a certain specification marked Exhibit "A," attached to and made a part of the con-
37 tract, but the specification is not given. It is not attached to the copy embodied in the affidavit, and therefore neither the files nor the record of the recorder of Franklin county will show this specification, and without — those interested are unadvised whether this material was furnished for or entered into the construction of the building. The specification is a part of the contract and a copy of the contract, within the meaning of the statute, necessarily includes a copy of the specification, and by its omission the claimants failed to comply with a material requirement of the statute. The lien claimed cannot be sustained.

Third. The American Blower Company.

This was an entire job for an entire price, and a detailed statement of labor and material was not required. 60 S. 473. The Missouri case cited (6 Mo. App. 54; 14 Mo. 270) are not applicable, because the Missouri statute does not require a copy of the contract to be filed. The first date of the itemized statement is the date of the execution of the contract, as will be seen by reference to the contract; namely, September 19, 1895. The date of the next item is November 4, 1895, which is the date of the commencement of actual work. There has been a substantial compliance with the statute, and the lien will be sustained.

Fourth. The Grand Rapids School Furniture Company.

The only objection made to this claim is that the affidavit was not made by an officer of the corporation, but by a mere agent. The objection is not well taken, and the lien will be sustained.

Fifth. The Akron Hydraulic Press Brick Company.

The affidavit shows that there was a contract to furnish brick and that they were furnished, as shown by the itemized statement, which gives dates, amounts and value. The entries in this account are such as will be understood by those in the trade. The lien will be sustained.

Sixth. C. B. Wood.

Here there was an entire job for an entire price, the price being $8164, subject to certain possible deductions, but the work was not completed and the claim is for a partial performance, full performance being prevented by the general contractor. The affidavit, therefore, should contain an itemized statement, showing the
38 amount and value of the labor performed and the material furnished, but the affidavit does not show the amount of either nor are there any facts stated in the affidavit from which the same can be ascertained. The affidavit is insufficient and the lien claimed cannot be sustained.

Replications should be filed to the answers to each of these cross-bills. There will be findings and a decree in accordance with this opinion.

And afterwards, to-wit, on the 20th day of August, A. D. 1901, an entry was made upon the journal of said court, clothed in the words and figures following, to-wit:

Journal E, page 186.

This day this cause came on to be heard upon the bill of complainants filed herein, the answer of the defendant, The Great Southern Fire Proof Hotel Company, and the replication of complainants thereto and the evidence and proofs in the case, and was argued by counsel.

Whereupon the court finds upon consideration of the said bill the answer thereto of the defendant, The Great Southern Fire Proof Hotel Company, the replication of complainants and the said evidence and proofs, in favor of complainants, and that the said complainants, Benjamin F. Jones, *et al.*, duly filed in the recorder's office of Franklin county, Ohio, on the 21st day of April, 1896, at 4:50 p. m., a certain affidavit for a mechanic's lien upon the premises then owned by the defendant, The Great Southern Fire Proof Hotel Company, and bounded and described as follows:

In lots Nos. 352, 353, 354, said premises being 187½ feet square, bounded on the north by Main street, on the east by Pearl street, on the *north* by Noble street and on the west by High street, in the city of Columbus, county of Franklin, and State of Ohio.

The said affidavit was in all respects in conformity with law, and was duly filed, as aforesaid, and the same became and was a valid and subsisting lien upon said premises from and after the 16th day of April, 1895, being the date on which the first item of material mentioned in said affidavit was furnished; that there is now due to complainants, Benjamin F. Jones, George M. Laughlin, Benjamin F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madelaine F. Laughlin, Willis L. King, Henry A. Laughlin,
39 James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips and Benjamin F. Jones, and William L. Jones, trustees under the last will and testament of Thomas M. Jones, deceased, for William L. Jones, Mary J. Hillard and Thomas M. Jones, Jr., partners doing business under the firm name and style of Jones and Laughlins, Limited, by virtue of said lien the sum of $11,410.02, with interest thereon from the 28th day of January, 1896, amounting in all at this date to $15,158.21; that said amount is due said complainants for and on account of said lien, and for and on account of materials furnished in and about the construction of the building of the defendant, The Great Southern Fire Proof Hotel Company, upon said premises hereinbefore described, and that no part of said amount has ever been paid to these complainants.

The court further finds that said amount was at the date complainants furnished said materials, and is now, a valid and subsisting lien upon said premises and that the complainants are entitled to have said lien foreclosed.

It is, therefore, ordered and decreed that unless the costs of this

suit, and the amount found due the plaintiffs, with interest from the 19th day of June, 1901, shall be paid within ten days from the date of this decree, and said lien and the said defendant's equity of redemption in said premises shall be foreclosed, and an order shall be issued to the marshal of this district, directing him to appraise, advertise and sell said premises according to law, and that of his proceedings in said premises he make due return to this court, and bring herein the proceeds of said sale; and the court further reserves all questions as to priority of liens and as to the several amounts due the other defendants in this suit for further consideration.

To each and every of which said findings, orders and decrees of the court the said defendant, The Great Southern Fire Proof Hotel Company, in open court and in the presence of and with notice to the attorneys and solicitors of the complainants and each of them, excepts and gives notice of and prays an appeal from each and every of said findings, orders and decrees to the United States circuit court of appeals for the sixth circuit, and gave notice for its desire to give a supersedeas bond to stay execution, order of sale and other proceedings on the decree herein rendered until the final termination of such appeal; and such appeal is granted and the court allows an appeal to said the United States circuit court of appeals for
40 the sixth circuit, and fixes the amount of said appeal bond in the sum of $—, to be conditioned to the effect that if the said The Great Southern Fire Proof Hotel Company shall prosecute said appeal to effect and pay all damages and costs rendered against it in case said judgment and decree be affirmed, and in case it make its plea and appeal good, said obligation then to be void, else to remain in full force and virtue; which said bond is to be approved by the court, and when so given and approved, all further proceedings in this court be suspended and stayed until the determination of said appeal, and said cause in said United States circuit court of appeals, the amount of the said supersedeas bond being fixed at the above amount in consideration of the appellant, The Great Southern Fire Proof Hotel Company, and the said the complainants having stipulated and agreed that the said appellant shall deposit with the proper officer of the court a sum sufficient to pay the costs and decree, if any, which may hereafter be rendered herein and adjudged against said appellant on the final determination of this cause in any court to which it may be carried—said sum to be applied to the payment of the decree heretofore herein rendered against appellant in case such decree is ultimately affirmed on the final determination of this cause.

And afterwards, to-wit, on the 20th day of August, A. D. 1901, the following petition on appeal was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Petition on Appeal.

BENJAMIN F. JONES ET AL., Complainants,
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY ET AL., Defendants.

Petition on appeal.

The above named defendants, The Great Southern Fire Proof Hotel Company, now comes and conceiving itself to be aggrieved by the order and decree made and entered against — on or about the 20th day of August, 1901, in the above entitled cause, in favor of
41 Benjamin F. Jones, George M. Laughlin, Benjamin F. Jones, Jr., Mary F. Laughlin, Willis D. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, deceased, for William L. Jones, Mary J. Hillard and Thomas N. Jones, Jr., partners doing business under the firm name and style of Jones & Laughlin, Limited, complainants herein, wherein and whereby, among other things, it was and is ordered and decreed that the affidavit for a mechanic's lien filed by the complainants upon the premises owned by the defendant, The Great Southern Fire Proof Hotel Company, and the amended bill of complaint, of the complainant, and in said decree specifically mentioned and described, was and is in all respects in conformity to law, and was and is a valid and subsisting lien upon said premises from the date of the first item in said affidavit contained, and there then remains due and owing unto the said complainants, by virtue of said lien $15158.21 and said amount is a valid and subsisting lien upon said premises of this defendant hotel company, and that the said defendants are entitled to have said lien foreclosed, and that unless the costs in this action, amounting to $—, and the amount found due the said complainants, amounting, on the 19th day of July, 1901, to $15158.21, to be paid within ten days from the date of said decree, that the mechanic's lien claimed by the said complainants, in the amended bill of complaint, on the premises of the defendant in said bill of complaint, and in said decree specifically described, the equity of redemption of this defendant, The Great Southern Fire Proof Hotel Company, in its premises and real estate in said decree and amended bill of complaint described, be foreclosed, and that an order issue to the marshal of said district to appraise, advertise and sell said premises according to law, and that of the proceeds of said premises he make due returns to said court, and bring into said court the proceeds of sale, doth hereby appeal from said order and decree to the honorable United States circuit court of appeals of the sixth district, under and according to the

laws of Congress and the statutes in such cases made and provided, for the reasons specified in the assignment of errors filed herein, and it prays that this its appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the
42 said the United States circuit court of appeals for the sixth circuit, and that an order be made fixing the amount of security, to-wit, a supersedeas bond, which the said The Great Southern Fire Proof Hotel Company shall give and furnish upon said appeal, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said appeal by the said the United States circuit court of appeals for the sixth circuit.

J. E. SATER,
D. F. PUGH,
Attorney- and Solicitors for the Appellant, The Great Southern Fire Proof Hotel Company.

And afterwards, to-wit, on the 20th day of August, A. D. 1901, the following assignment of errors was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Assignment of Errors.

In the Circuit Court of the United States, Southern District of Ohio, Eastern Division.

BENJAMIN F. JONES ET AL.
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY, a Corporation, *et al.*

Now comes the respondent, The Great Southern Fire Proof Hotel Company, designated in the pleadings as a defendant herein, and says that the judgment and appeal rendered in this case against it, and in favor of Benjamin F. Jones, George M. Laughlin, Benjamin F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madelaine F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, deceased, for William L. Jones, Mary J. Hillard and Thomas M. Jones, Jr., partners doing business under the firm name and style of Jones & Laughlins, Limited,
43 by the circuit court of the United States, for the southern district of Ohio, eastern division, is erroneous and against the just rights of the said The Great Southern Fire Proof Hotel Company, for the reasons hereinafter following, and files the following assignment of error on which it will rely:

I.

The United States circuit court for the southern district of Ohio, eastern division, erred in overruling the demurrer interposed by the said The Great Southern Fire Proof Hotel Company to the amended bill of complaint of the said complainants filed in said cause.

II.

The said court erred in holding and decreeing the mechanic's lien law of Ohio, especially each and every of the sections thereof known as sections 3184 (91 O. L., page 135) 3185 (Bates Annotated Ohio Statutes), and 3185 (*a*) (91 O. L., page 137), under which said sections the complainants seek to enforce the purported lien set out in their said amended bill of complaint, to be constitutional, and not in contravention and violation of section one (1) of the bill of rights of the constitution of the State of Ohio, and of section one (1), article fourteen (14) of the Constitution of the United States.

III.

The said court erred in not following the decision of the supreme court of the State of Ohio in the cases of Palmer & Crawford *v.* Tingle, and Young *v.* Lion Hardware Company, (55 O. S. 423) holding the said mechanic's lien law unconstitutional, to-wit, sections 3184 (91 O. L., p. 135), 3185 (Bates Annotated Ohio Statutes) and 3185 (*a*) (91 O. L., p. 137) under which the said complainants claimed and sought to enforce the purported lien set out in their said amended bill of complaint, which said decision was rendered, prior to the commencement of this action.

The said court erred in holding and decreeing that the pretended lien claimed by the said complainants, set forth in their said amended bill of complaint, and which it seeks to enforce, is sufficient in substance and form, and in compliance with the statutory provisions and requirements of the said mechanic's lien law of Ohio governing the mode of procedure, and specifying the requisite steps to be taken to obtain a mechanic's lien, especially section 3185 (Bates Annotated Ohio Statutes).

44 V.

The said court further erred in holding and decreeing as to the substance, sufficiency and form of said purported mechanic's lien.

(*a.*) That the statement of the amount and value of the labor, machinery and material claimed to have been furnished by the said complainants, as set forth in their pretended lien, and the affidavit to procure the same, is itemized, or sufficiently itemized, and made to comply with the provisions of the said mechanic's lien law of Ohio, section 3185 of the Revised Statutes of Ohio.

(*b.*) That the affidavit filed for and in behalf of said complainants, and the purported mechanic's lien based on, and claimed on

account of, said affidavit, sufficiently states the terms and conditions of said company's contract with William J. McClain, the original contractor for the construction of said hotel company's building, and is in compliance with the provisions and requirements of said mechanic's lien law of Ohio, section 3185 of the Revised Statutes of Ohio.

VI.

The said court erred in overruling the motion filed herein by the said The Great Southern Fire Proof Hotel Company for leave to file an amended answer to the amended bill of complaint of the said complainants, and in refusing to permit said amended answer to be filed.

VII.

The said court erred in rendering a judgment and decree in said cause in favor of the said complainants, and against the said The Great Southern Fire Proof Hotel Company.

VIII.

The judgment and decree rendred by said court should have been rendered in favor of said The Great Southern Fire Proof Hotel Company, and against the said complainants.

Wherefore, the said appellant, The Great Southern Fire Proof Hotel Company, prays that the said decree and holdings of said the *Great Southern Fire Proof Hotel Company, prays that the said decree and holdings of said the* circuit court of the United States, southern district of Ohio, eastern division, be reversed and that the said court may be directed to enter a decree dismissing the
45 amended bill of complaint of the said complainants. And for all such other and further orders as the justice and equity of this cause may require.

J. E. SATER,
D. F. PUGH,
Solicitors and Attorneys for the Appellant, The Great Southern Fire Proof Hotel Company.

And afterwards, to wit, on the 20th day of August, A. D. 1901, the following appeal allowed was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Entry E, 188.

BENJAMIN F. JONES ET AL., Complainants,
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY ET AL., Defendants.

Entry: Appeal allowed—Bond fixed.

This day came The Great Southern Fire Proof Hotel Company, defendant herein, by its attorneys, J. E. Stater and D. F. Pugh, and present its petition for the allowance of an appeal from the judgment and decree lately rendered against the said The Great Southern Fire Proof Hotel Company in favor of Benjamin F. Jones, George F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madelaine F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr. James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, Jr., partners doing business under the firm name and style of Jones & Laughlin, Limited, in the circuit court of the United States, southern district of Ohio, eastern division, in a suit pending in said court between Benjamin F. Jones, *et al.*, complainants, and The Great Southern Fire Proof Hotel Company, defendants, which petition for allowance of appeal was and is accompanied by an assignment of errors, and which petition prays that an order be made fixing the amount of security which defendant shall give of said security all further proceedings of this court
46 & 47 be suspended and stayed until the determination of said appeal and of said cause by the United States circuit court of appeals in and for the sixth judicial circuit; and said petition and appeal having this day been, and now being duly granted and allowed, the amount of said supersedeas bond is hereby fixed at $300, the appellant also to deposit with the proper officer of this court a sum sufficient to pay all the costs and the decree, if any, which may be rendered against it hereafter in any court to which this cause may be carried on the final determination thereof.

Now, therefore, it is ordered that upon the said The Great Southern Fire Proof Hotel Company filing with the clerk of this court a good and sufficient bond in the sum of $300.00 to the effect that if the said The Great Southern Fire Proof Hotel Company shall prosecute said appeal to effect and pay all damages and costs rendered against it, in case said judgment and decree shall be affirmed and in case it fail to make its appeal plea good, then the said obligation shall be void, else to remain in full force and virtue, the said bond to be approved by the court, and all further proceedings in this court be, and they are hereby suspended and stayed until the determination of said appeal and said cause in the said The United States circuit court of appeals.

—— ——, *Judge.*

Dated August 20th, 1901.

48 UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Eastern Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America, within and for the division and district aforesaid, do hereby certify that the foregoing is a full, true and complete transcript of the proceedings had by and before said court, in the Great Southern Fire Proof Hotel Company matter, and as the same appears of record and on file in said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at the city of Columbus, Ohio, this 28th day of September, A. D. 1901.

[SEAL.]

B. R. COWEN, *Clerk,*
By JANIE W. F. COWEN,
Deputy Clerk.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

To Benjamin F. Jones, George F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madeline F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, deceased, for William L. Jones, Mary J. Hillard, and Thomas M. Jones, Jr., partners doing business under the firm name and style of Jones & Laughlins, Limited, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the sixth
49 circuit, to be holden at the city of Cincinnati, in said circuit, on the* 29th day of September next, pursuant to an appeal, filed in the clerk's office of the circuit court of the United States for the southern district of Ohio, eastern division, wherein The Great Southern Fire Proof Hotel Company, a corporation, — appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 30th day of August, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-sixth.

C. D. CLARK,
Judge of the United States District Court within and for the Eastern and Middle Districts of Tennessee, Sitting and Holding Circuit Court by Designation.

* Not exceeding 30 days from the day of signing.

Return.

Received this writ at Columbus, O., on September the 2nd, 1901. And on the 4th day of September, 1901, I served the same on the within-named Benjamin F. Jones, George F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madaline F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips and Benjamin F. Jones and William L. Jones, trustees, by personally handing to Albert L. Thurman, the attorney for the within-named persons, true copies of the same with all the indorsements, for each of the within-named persons at Columbus, O.

V. J. FAGIN,
U. S. Marshal, S. D. O.,
By ALBERT BAUER, *Deputy.*

Fees.

Thirteen services	$26 00
Thirteen copies	6 50
Mileage, 3 miles	18
Total	$32 68

Security for costs furnished.

50 Marshal's civil docket No. 1742. No. 796. United States circuit court, southern district of Ohio, eastern division. Benjamin F. Jones, *et al.*, complainants, *vs.* The Great Southern Fire Proof Hotel Co., *et al.*, defendants. Citation. Filed Sept. 6, 1901. B. R. Cowen, clerk. J. E. Sater, attorney.

51 United States Circuit Court of Appeals, Sixth Circuit.

GREAT SOUTHERN FIRE PROOF HOTEL COMPANY, Appellant,
vs.
BENJAMIN F. JONES ET AL., Appellees.
} No. 1034.

Stipulation Regarding Correction of Printed Record.

It appearing that there are errors in the printed record filed herein on Dec. 9th, 1901, it is hereby stipulated and agreed by and between J. E. Sater and D. F. Pugh, as solicitors for The Great Southern Fire Proof Hotel Company, appellant, and Outhwaite, Linn & Thurman, as solicitors for Benjamin F. Jones and others, appellees, that such printed record shall be corrected in the following respects and in the following manner, to-wit:

1st. On page 21 the words "C. B. Wood *vs.* The Great Southern Fire Proof Hotel Company *et al.*, No. 968" shall be stricken out by drawing across the same red ink lines.

2nd. That all of page 21 commencing with and following the words "and afterward, to-wit, on the 18th day of June, A. D. 1901," shall be crossed out by red ink lines and that as all the matter in such printed record commencing with the top of page 22 and ending with the bottom of page 34 is improperly in said printed record, pages from 21 to 35 shall be riveted together so that the court need not examine the same and that the first half of page 35 ending with the words "by R. H. Wilcox, dpt.," shall be ruled out with red ink lines.

3rd. That the bond appearing on the last half of page 46 and extending over page 47 and ending near the top of page 48 of such printed record shall be stricken out by drawing across the same lines made with red ink for the reason that such bond is the one given by the Great Southern Fire Proof Hotel Company to the American Blower Company.

4th. That a copy of the supersedeas bond and also of the agreed statement of facts entered into between said solicitors prior to
52 the trial of this cause in the circuit court, and on which this cause was tried in that court shall be printed and made a part of the printed record and attached at the end of the printed record filed on December 9th, 1901, and shall be a part thereof as fully as if the same had been originally made a part of such printed record.

6th. That the word "cross bill" as it appears in the index on the first page of such printed record shall be stricken out with red ink and instead thereof shall be written the word "opinion."

J. E. SATER &
D. F. PUGH,
Solicitors for The Great Southern Fire Proof Hotel Company, Appellant.
OUTHWAITE, LINN & THURMAN,
Solicitors for Benjamin F. Jones and Others, Appellees.

No. 1034. Circuit court of appeals, sixth circuit. The Great Southern Fire Proof Hotel Company, appellants, *vs.* Benjamin F. Jones, *et al.*, appellees. Stipulation regarding correction of printed record. Filed Jan. 28, 1902. Frank O. Loveland clerk.

No. 1034. United States circuit court, southern district of Ohio, eastern division. Benjamin F. Jones, *et al.*, *vs.* The Great Southern Fire Proof Hotel Company, *et al.* Agreed statement of facts between hotel company and Jones & Laughlins, Limited. Filed June 18, 1901. B. R. Cowen, clerk. Filed Jan. 28, 1902. Frank O. Loveland, clerk.

53 In the Circuit Court of the United States, Southern District of Ohio, Eastern Division.

To the honorable judges of the circuit court of the United States for the southern district of Ohio, eastern division, sitting in equity:

BENJAMIN F. JONES, GEORGE M. LAUGHLIN, BENJAMIN F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madelain F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin J. Jones and William L. Jones, Trustees under the Last Will and Testament of Thomas M. Jones, Deceased, for William L. Jones, Mary J. Hilliard, and Thomas M. Jones, Jr., Partners Doing Business under the Firm Name and Style of Jones & Laughlins, Limited, Complainants, } No. 796.

vs.

THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY, a Corporation; The Akron Hydraulic Press Brick Company, a Corporation; Joseph Sosman and Perry Landis, Partners Doing Business under the Firm Name and Style of Sosman & Landis; The American Blower Company, a Corporation; The United States Mortgage & Trust Company, a Corporation, Defendants.

It is hereby stipulated and agreed by and between the attorneys for The Great Southern Fire Proof Hotel Co., one of the defendants herein, and the attorneys for Jones & Laughlin's, Limited, complainants herein, that the following, marked "Exhibit One," is a true copy of the affidavit for a mechanic's lien and of the account thereto attached made a part thereof and marked "Exhibit A," which was filed by the said Jones & Laughlin's, Limited, in
54 the office of the county recorder of Franklin county, Ohio, on April 2nd, 1896, and recorded in Lien Record No. 9, pages 99–100, in said recorder's office, for the purpose of obtaining a mechanic's lien on the property of the said hotel company and being the instrument referred to in the amended bill of complaint of the said Jones & Laughlin's, Limited, as their mechanic's lien.

It is also stipulated and agreed by and between said attorneys that on the trial of the issues herein as between said defendants to wit, The Great Southern Fire Proof Hotel Company and the said Jones & Laughlin's, Limited, that the aforesaid copy of such affidavit and of the exhibit attached thereto and made a part thereof, may be used as evidence in so far as competent and to the same effect as if the record thereof were offered in evidence and as if formal proof had been made thereof.

The said The Great Southern Fire Proof Hotel Company, while waiving all such formal proof as to such affidavit and exhibit,

objects to the said affidavit and the copy thereof as incompetent, immaterial and irrelevant, for the reason that the account marked "Exhibit A" must be complete and show its sufficiency on its face, and can not be aided or helped by any averment, allegation or recital contained in the affidavit itself.

It is further stipulated and agreed that the term "ton of structural steel" used in the contract incorporated in said "Exhibit One," means a ton of two thousand (2,000) pounds.

The said The Great Southern Fire Proof Hotel Company also objects to said stipulation as to the number of pounds in a ton of structural steel as used in the contract, as incompetent, immaterial and irrelevant, for the reason that neither the claim for a lien or the account marked "Exhibit A" can be supplemented by evidence extraneous and outside of the claim of and account for the lien itself.

All questions as to relevancy and competency of such affidavit and exhibit, and each and every part thereof so to be offered at the hearing of this case, shall be considered reserved and as not waived whether specifically enumerated as above or not.

It is also stipulated and agreed that either or both of the parties hereto may offer such other and further evidence as such party may have.

OUTHWAITE, LINN & THURMAN,
For Complainant.

J. E. SATER AND
D. F. PUGH,
Attorneys and Solicitors for The Great Southern Fire Proof Hotel Company.

55 "EXHIBIT ONE."

The Great Southern Fire Proof Hotel Company
to
Jones and Laughlin's, Ltd.

STATE OF PENNSYLVANIA, *County of Allegheny,* } ss:

Personally before me, a notary public in and for said county appeared B. F. Jones, Jr., who being by me first sworn, makes oath and says that he is one of the members of the limited partnership association doing business under the name and style of Jones and Laughlins, Limited; that said association is a limited partnership association organized under the act of the General Assembly of Pennsylvania, approved June 2nd, 1874, entitled, "An act authorizing the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of the association except under certain circumstances," and that he is one of the managers of said association.

Affiant further makes oath and says that the annexed statement marked "A," which is made a part of this affidavit, is a true and correct itemized statement of the amount and value of the labor performed and materials furnished by said Jones and Laughlins, Limited, to, for, in and about the construction, erection and completion of a certain building in the city of Columbus, Franklin county, Ohio, known as the Great Southern hotel, said building being a fire proof building containing a hotel building, a theater and business rooms and being erected by a certain corporation organized under and by virtue of the laws of the State of Ohio, known as the Great Southern Fire Proof Hotel Company; said labor and materials so furnished to, in, for and about the construction, erection and completion of said building were furnished at the times in said annexed statement mentioned under and by virtue of a contract in writing entered into by and between said Jones and Laughlins, Limited, and one William J. McClain, who was at the times herein mentioned the principal contractor engaged in erecting and in constructing said building for said The Great Southern Fire Proof Hotel Company, a copy of which contract between the said William J. McClain and the — Jones and Laughlins, Limited, is as follows, viz.:

56 COLUMBUS, OHIO, *Dec.* 13*th*, 1894.

W. J. McClain, Columbus, Ohio.

DEAR SIR: We agree to furnish you nine hundred (900) tons structural steel for the Great Southern hotel, Columbus, Ohio, fitted ready for erection in accordance with the revised plans and specifications, for the sum of thirty-two thousand five hundred and eighty ($32,580.00) dollars delivered F. O. B. cars Columbus.

We also further agree that if an additional quantity of steel is required more than the 900 tons above specified that we will furnish the same at the rate of $1.81 per hundred pounds delivered at Columbus, or if a less amount is required than the 900 tons, then we will allow deduction from the contract price at the rate of $1.81 per hundred pounds for the difference between the amount shipped and the 900 tons above specified.

It is understood that we can commence shipment at once and that all the orders will be completed before August 1st, 1895.

Terms of payment are cash, to be paid on the fifth of the month following shipment.

Yours truly,

JONES AND LAUGHLINS, LIMITED.

(Signed) R. GERRY.

The above proposition is this day accepted.

(Signed) W. J. McCLAIN.

The values of said labor and materials are as stated in said itemized statements hereto annexed and the same are just and reasonable.

There are no credits nor set-offs against the same excepting as stated in said annexed statement and there remains due and unpaid thereon to the said Jones and Laughlins, Limited, from the said William J. McClain and from the said The Great Southern Fire Proof Hotel Company the sum of eleven thousand four hundred and ten dollars and two cents ($11,410.02), with interest thereon from January 28th, 1896.

At the time said contract was entered into and said labor was performed and said materials furnished, the said The Great Southern Fire Proof Hotel Company was the owner of said building and the lots of land upon which the same are situated, which are described as follows, viz., to wit: Situate in the city of Columbus, county of Franklin and State of Ohio, and being inlots numbered 352,
57 353 and 354 in the town (now city) of Columbus, Franklin county, State of Ohio, as the said inlots are marked and delineated upon the original plat of said town (now city).

Said Jones and Laughlins, Limited, are the owners of said account and claim for labor and materials hereto attached; said Jones and Laughlins, Limited, claim a lien upon said premises to secure payment of said indebtedness.

B. F. JONES, JR.

Sworn to before me and subscribed in my presence this 31st day of March, 1896, by the above named B. F. Jones, Jr.

[SEAL.] WILLIAM C. MORELAND, JR.,
Notary Public.

"A."

PITTSBURG, PA., *M'ch 21st*, 1896.

W. J. McClain, Columbus, Ohio, bought of Jones and Laughlins, Limited.

1895.	
April 17, mdse	545 10
April 22, mdse	501 21
May 1, mdse	882 55
May 4, mdse	432 12
May 11, mdse	606 30
May 20, mdse	737 82
May 25, mdse	670 46
May 29, mdse	546 71
June 1, mdse	621 00
June 5, mdse	418 98
June 11, mdse	491 91
June 17, mdse	629 61
June 18, mdse	681 66
June 20, mdse	11 37
June 21, mdse	496 49
July 3, mdse	766 83

July 13, mdse	513 25	
July 17, mdse	618 24	
July 20, mdse	632 12	
July 29, mdse	520 56	
Aug. 2, mdse	664 85	
Aug. 5, mdse	719 60	
Aug. 8, mdse	566 58	
58 Aug. 12, mdse	453 04	
Aug. 16, mdse	507 19	
Aug. 20, mdse	830 85	
Aug. 26, mdse	823 71	
Aug. 28, mdse	1,270 48	
Aug. 31, mdse	581 92	
Sept. 9, mdse	2,368 40	
Sept. 10, mdse	681 08	
Sept. 14, mdse	934 66	
Sept. 20, mdse	461 75	
Sept. 26, mdse	606 56	
Sept. 28, mdse	636 72	
Oct. 1, mdse	15 42	
Oct. 3, mdse	892 14	
Oct. 7, mdse	1,616 69	
Oct. 9, mdse	1,142 99	
Oct. 12, mdse	932 39	
Oct. 15, mdse	1,126 28	
Oct. 16, mdse	489 14	
Oct. 17, mdse	694 92	
Oct. 19, mdse	922 39	
Oct. 23, mdse	753 21	
Oct. 23, mdse	1,060 18	
Oct. 24, mdse	698 12	
Oct. 24, mdse	1 60	
Oct. 25, mdse	701 66	
Oct. 28, mdse	892 92	
Oct. 29, mdse	612 70	
Oct. 31, mdse	759 76	
Nov. 4, mdse	650 05	
Nov. 6, mdse	847 17	
Nov. 7, mdse	584 07	
Nov. 11, mdse	519 72	
Nov. 21, mdse	668 81	
Nov. 25, mdse	790 86	
Nov. 26, mdse	495 29	
Dec. 3, mdse	575 72	
Dec. 11, mdse	16 56	
Dec. 31, mdse	1,054 31	
1896.		
Jan'y 10, mdse	350 07	
Jan'y 28, mdse	42	
		43,296 74

1895.			
May 9, credit by cash	1,046	31	
June 10, credit by cash	3,875	96	
July 26, credit by cash	3,351	02	
Aug. 29, credit by cash	3,051	00	
59 Oct. 5, credit by cash	10,000	00	
Oct. 31, by mdse	24	5(	
Nov. 21, by mdse		84	
Nov. 27, by mdse	1	17	
Nov. 27, by mdse	6	76	
Dec. 23, by mdse	10,000	00	
1896.			
Mar. 20, mdse allowance	527	16	
			31,886 72
			$11,410 02

Filed Ap'l 2nd, 1896, at 4:50 p. m. Recorded Ap'l 10th, 1896.
J. W. PETERS, *Recorder*,
By R. H. WILCOX, *D'p'ty*.
S.

In the Circuit Court of the United States, Southern District of Ohio, Eastern Division.

BENJAMIN F. JONES ET AL., Complainants,
vs.
THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY *et al.*, Defendants. } No. 796.

Supersedeas Bond.

Know all men by these presents, that we, The Great Southern Fire Proof Hotel Company, of Columbus, Ohio, principal, and The United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto the above-named complainants, Benjamin F. Jones, George F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madeline F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, deceased, for William L. Jones, Mary J. Hilliard and Thomas M. Jones, Jr., partners, doing business under the firm name and style of Jones & Laughlins, Limited, in the full and just sum of three hundred dollars ($300.00), to be paid to the said Benjamin F. Jones, George F. Jones, Jr., Mary J. Laughlin, Mary McM. Laughlin, Madeleine F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phil-
60 lips, and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, de-

ceased, for William L. Jones, Mary J. Hilliard and Thomas M. Jones, Jr., partners doing business under the firm name and style of Jones and Laughlins, Limited, their attorneys, successors, administrators, executors or assigns, for the payment of which well and truly to be made we bind ourselves and each of us, our successors, heirs, executors, administrators and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 21st day of August, in the year of our Lord, one thousand nine hundred and one.

Whereas, the above named, The Great Southern Fire Proof Hotel Company, lately at a session of the circuit court of the United States for the southern district of Ohio, eastern division, in a suit pending in said court between the said Benjamin F. Jones and others, complainants, and The Great Southern Fire Proof Hotel Company, and others, respondents and defendants, a judgment and decree was rendered against the said The Great Southern Fire Proof Hotel Company, in favor of said complainants, and the said The Great Southern Fire Proof Hotel Company having obtained an order allowing an appeal to the United States circuit court of appeals of the sixth district, to reverse the decree of the aforesaid suit, and filed a copy thereof in the clerk's office of said court, and a citation directed to the said Benjamin F. Jones, George F. Jones, Jr., Mary F. Laughlin, Mary McM. Laughlin, Madelaine F. Laughlin, Willis L. King, Henry A. Laughlin, James Laughlin, Jr., James B. Laughlin, Charles C. Briggs, Eliza L. Phillips, and Benjamin F. Jones and William L. Jones, trustees under the last will and testament of Thomas M. Jones, deceased, for William L. Jones, Mary J. Hilliard and Thomas M. Jones, Jr., partners doing business under the firm name and style of Jones and Laughlins, Limited, is about to be issued, if need be, citing and admonishing them to be and appear at the session of the United States court of appeals to be holden at the city of Cincinnati, in said circuit, on the — day of ——, 1901, the notice and granting of such appeal having beeu given and granted in open court in the presence and with the knowledge of the solicitors and attorneys of complainants.

Now, therefore, the condition of this obligation is such that if the said The Great Southern Fire Proof Hotel Company shall prosecute said appeal to and with effect, and answer and pay all dam-
61 ages and costs rendered against it, in case said decree shall be affirmed, and in case it fail to make its appeal and plea good, then the above obligation to be void; otherwise the same shall be and remain in full force and virtue.

THE GREAT SOUTHERN FIRE PROOF HOTEL COMPANY,
By NICHOLAS SCHLEE, *President.*
THE UNITED STATES FIDELITY AND GUARANTY COMPANY,
By FRANK TALLMADGE, *Gen'l Ag't.*

Sealed and delivered in presence of:
Attest: H. B. ARNOLD, *Att'y.*

Approved:
C. D. CLARK,
U. S. District Judge, Sitting and Holding Circuit Court by Designation.

No. 1034. In the circuit court of the United States, southern district of Ohio, eastern division. No. 796. Benjamin F. Jones *et al.*, *vs.* The Great Southern Fire Proof Hotel Company, *et al.* Super sedeas bond. Filed Jan. 28, 1902. Frank O. Loveland, clerk. Copy.

62 And afterwards towit on October 2nd 1901, præcipe for appearance of counsel was filed which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

GREAT SOUTHERN FIRE PROOF HOTEL CO.
vs.
BENJAMIN F. JONES ET AL. } # 1034.

To the clerk of said court:

Please enter my appearance as counsel for the appellant.
J. E. SATER.

63 And afterwards towit on May 6th, 1902, an entry was made upon the journal of said court in said cause which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

GREAT SOUTHERN FIRE PROOF HOTEL CO.
vs.
JONES & LAUGHLIN. } # 1034. Before Lurton, Day, & Severens, J. J.

These causes coming on for hearing are argued for the Great Southern Fire Proof Hotel Co. by Mr. J. E. Sater and for Sosman & Landis by Mr. L. C. Addison and for Jones & Laughlin by Mr. T. P. Linn and further hearing continued until tomorrow.

And afterwards towit on May 7th, 1902, an entry was made in said cause clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

GREAT SOUTHERN FIRE PROOF HOTEL CO. vs. JONES & LAUGHLIN. } # 1034.

These causes coming on for further hearing are argued for the Great Southern Fire Proof Hotel Co. by Messrs. J. E. Sater and D. F. Pugh and for the lien holders by Mr. T. P. Linn, and the cases are submitted.

64 And afterwards to wit on June 3rd 1902, a decree was entered in said cause clothed in the words and figures as follows:

Decree.

65 United States Circuit Court of Appeals for the Sixth Circuit.

GREAT SOUTHERN FIRE PROOF HOTEL CO. v. BENJAMIN F. JONES ET AL. } No. 1034.

Appeal from the circuit court of the United States for the southern district of Ohio.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court, in this cause, be and the same is hereby affirmed with costs.

66 And afterwards to wit on June 20th 1902, an opinion was filed in said cause which reads and is as follows:

Opinion.

67 Nos. 1031, 1032, 1034, and 1036.

United States Circuit Court of Appeals, Sixth Circuit.

GREAT SOUTHERN FIRE PROOF HOTEL CO., Appellant,
vs.
BENJAMIN F. JONES ET AL., Appellees.

GREAT SOUTHERN FIRE PROOF HOTEL CO., Appellant,
vs.
AMERICAN BLOWER CO., Appellee.

GREAT SOUTHERN FIRE PROOF HOTEL CO., Appellant,
vs.
AKRON HYDRAULIC PRESS BRICK CO., Appellee.

GREAT SOUTHERN FIRE PROOF HOTEL CO., Appellant,
vs.
GRAND RAPIDS SCHOOL FURNITURE CO., Appellee.

Appeals from the Circuit Court of the United States for the Southern District of Ohio.

Submitted May 7, 1902; decided June 3, 1902.

Before Lurton, Day, and Severens, circuit judges.

These four separate appeals involve sub-contractors' liens asserted under a statute of Ohio against the property of the Great Southern Fire Proof Hotel Company at Columbus, Ohio.

The material facts common to all the cases are these:

By a contract dated October 10, 1894, one William J. McClain became the principal contractor for the complete construction of a large fire-proof hotel and opera house for the Great Southern Fire Proof Hotel Company, a corporation of the State of Ohio.

68 For the entire materials and work the hotel company agreed to pay the sum of $345,000.00.

The complainants in the suits below, for convenience, heard on appeal together, are all sub-contractors who did part of the work or furnished part of the materials used in the construction of said building, under contracts with the principal contractor, and who now assert liens on the said structure by virtue of the provisions of the law then in force, being an act passed April 13, 1894, and carried into Annotated Ohio Statutes as sections 3184, 3185 and 3185a.

The defenses were that the complainants had not complied with the terms and conditions of the law giving the lien claimed and that if they had done so that so much of the act of April 13, 1894, as gives a lien upon the property of an owner for materials supplied or labor performed at the instance of a principal contractor is void as in conflict with the organic law of Ohio. The court below found against both these defenses and granted the prayers of the several bills.

LURTON, circuit judge, after making the foregoing statement of the case, delivered the opinion of the court.

1. The hotel company objects to the claims of Jones and Laughlins, Limited, because they did not in their respective claims for liens file an "itemized statement or account," as required by section 3185, Bates' Statutes.

To secure the lien provided by the preceding section, section 3185, in substance, provides, that the person claiming the lien "shall, within four months of the time from performing such labor, or furnishing such machinery or material *file with the recorder of the county* * * * *etc., an affidavit containing an itemized statement of the amount and value of such labor, machinery, or material* and a description of any promissory note or notes given for such labor, machinery or material, or any part thereof, with all credits and offsets thereon, *a copy of the contract, if it is in writing*, a statement of the amount and times of payment to be made thereunder and a description of the land * * * on which the house * * * or * * * structures may stand, * * * ; and the same shall be recorded in a separate book to be kept therefor, and shall operate as a lien from the date of the first item, etc."

The italics are ours.

The "itemized statement or account" made a part of the recorded affidavit filed, consisted of some sixty-four items, aggregating
69 $43,296.74, each item being dated. This account is then credited with $31,886.72, leaving a balance due of $11,420.02. The form of this account is as follows:

"PITTSBURG, PA., *March* 21, 1896.

W. J. McClain, Columbus, Ohio, bought of Jones & Laughlin, Limited.

1895.	
April 17. Merchandise	$545.10
April 22. Merchandise	501.21"

Sixty-two other items of "merchandise" under as many different dates then follow.

The objection is to the indefiniteness of this statement.

"Merchandise," say the appellants, is a trade term covering every form of movable, customarily bought and sold for gain, and from an account so stated it can not be told what kind of merchandise is

claimed to be "materials" used in or about the structure erected for the hotel company. "For all that can be known from this itemized statement," say counsel, "the Jones & Laughlin Company may have sold and delivered to McClain, the principal contractor, canary birds or fiddle strings for which they now claim a lien upon appellants' property as materials furnished for and on account of the structure erected for it."

This criticism is based upon the contention that this statement can not be read in connection with the affidavit filed by Jones & Laughlins of which the statement is a part.

The statute requires as a foundation for the lien the filing and recording of an affidavit "*containing* an itemized statement of the amount and value" * * * of the materials furnished and work done, and all credits, etc., and a "copy of the contract, if it is in writing," etc.

Thus the "contract," and the "itemized statement," are made parts of the lien affidavit. Looking to the Jones & Laughlin affidavit we find that a copy of the contract with W. J. McClain, who is averred to have been the principal contractor engaged in the erection of the appellants' hotel and opera house, is set out in full and made part of the affidavit and that it is averred that, "the annexed statement marked 'A' which is made part of this affidavit *is a true and correct itemized statement of the amount and value of the labor performed and materials furnished by said Jones & Laughlins, Limited*, to, for, in and about *the construction, erection and completion of a certain building, etc.*, * * * "said labor and materials so furnished to, in, for and
70 about the construction erection and completion of said building *were furnished at the times in said annexed statement mentioned under and by virtue of a contract in writing entered into, by and between* said Jones & Laughlin and one W. J. McClain, who was at the times herein mentioned the principal contractor, etc."

Now, if we read this itemized statement, as it was intended to be read, as a part of the recorded affidavit and in connection with the contract made a part thereof and fully set out, and in connection also with the other facts averred in said affidavit, we shall at once discover that Jones & Laughlins, Limited, had furnished the items of "merchandise" mentioned under a contract by which they were to furnish 900 tons of structural steel needed for the Great Southern Hotel Company, Columbus, Ohio, "fitted ready for erection in accordance with the revised plans and specifications for the sum of $32,580.00, delivered F. O. B. cars at Columbus." And that if more was needed it should be furnished "at the same rate of $1.81 per hundred, or if less amount is required than the 900 tons, a deduction to be allowed at the same rate." We shall see also that this affidavit avers that the statement "*is a true and correct itemized statement* of the amount and value of the labor performed and *materials furnished* in pursuance of said contract."

To refuse an interpretation of this "itemized statement" in the light of the other parts of the same affidavit would be to apply a different rule of construction to such a claim for lien from that ap-

plicable to every other kind of written document. The object in requiring the affidavit to include a copy of the written contract and an itemized statement of the labor performed is to give notice to all concerned of the claim and the basis upon which it stands.

Manifestly, the itemized statement may be supplemented by any more definite facts which appear to explain it and which constitute a part of the same recorded affidavit.

United States Blow Pipe Co. *v.* Spencer, 40 W. Va. 698; Knobbs Appeal, 10 Pa. St., 186; Bangs *v.* Berry, 82 Iowa 350; Bethell *v.* Lumber Co., 39 Kan., 230.

Construed in connection with the affidavit of which it is a part it is plain that "merchandise" stands for "structural steel," and that the item under date of April 17, 1895, is for an amount of structural steel delivered that day at $1.81 per hundred, $545.10.

If it is desired to know the number of pounds that day delivered the calculation is easy made.

71 That is certain which can be made certain. The case of Kern *v.* Pfaff, 44 Mo. App. 29. is not applicable because no sufficient facts appeared there to enable one to see without going beyond the affidavit what the price per roll was or the number of rolls of paper used.

The objection was untenable and was properly overruled.

2. The objection to the "itemized statement" filed by the American Blower Company as part of its affidavit is even more untenable.

The contract made a part of the affidavit, as required by the Ohio statute, shows an entire contract for a heating and ventilating plant, at the price of $3,989.00. The account filed as part of the affidavit is in these words:

"Sept. 19, to contract $3,989.00."

Then follow items not included in the contract and not objected to.

When the job is an entire one for an entire price an itemized statement is not required. This was the holding under former Ohio statutes containing a requirement substantially like the present statute. Davis *v.* Hines, 60 State 473; Thomas *v.* Huesman, 100 State 152, 158.

The cases relied upon by appellant of Lewis *v.* Cutter, 6 Mo. App. 54, and Nelson *v.* Withrow, 14 Mo. App. 270, arose under a statute which did not require the contract to be made a part of the filed affidavit.

By the very great weight of authority an itemized account is not necessary when the contract is for all the work or materials, or all of a specific part thereof, at a lumping or fixed price. 20 Am. & Eng. Ency. of Law, 2nd ed., p. 414, and cases there cited.

The next objection is that there is no date to show when this lien was attached. The date, June 29, 1896, at head of account is plainly the date when made up. The date September 19th at top and to the left of item "To contract $3,989.00" is by comparison with the contract referred to and part of the same affidavit, the date

when the "contract" was made. The next date below, November 4, is evidently the date of "first item" or beginning of the work.

3. The itemized statement of the Akron Hydraulic Press Brick Company is also objected to as vague. When read in connection with the other parts of the affidavit we see that the items are for brick of various quality and shape.

A statement of account is not insufficient simply because trade terms and book-keepers' abbreviations are used. No one
72 can fail to see that the items of the account are for different kinds of brick, the number and price of each being given.

It is not enough to render an itemized statement insufficient under such a lien statute that every one shall know just what kind of brick are meant by such an item as "745 jack arch," or "385 plain arch," or "9100 standard 2nds." If by reading the itemized statement in connection with the affidavit of which it is a part it can be seen that the items are for brick claimed to have been furnished under a contract written or oral the requirement of the statute of an "itemized statement" is substantially complied with. If such trade terms or book-keepers' abbreviations are unintelligible to the court, it is competent to hear evidence from those familiar with the trade as to their meaning. Wetmore *v.* Marsh, 31 Iowa 677; Henry *v.* Platt, 84 Mo. 237.

The objection that the contract is not set out in the affidavit is irrelevant because it is averred that the contract was not in writing, and the requirements of the statute is that a copy of the contract shall be set — "if in writing." The terms of the oral contract are sufficiently shown in connection with the account to be regarded as a substantial compliance with the statute.

4. It is next objected that the verification to the filed affidavit of the claim of the Grand Rapids School Furniture Company is not by an agent having knowledge of the facts. This is a pure assumption, based alone upon the fact that the agent verifying is also the counsel of record. The statute does not require that any particular person or agent shall make the statutory affidavit. Undoubtedly any one who deems himself acquainted with the facts may make the necessary affidavit. There is nothing in the transcript to indicate that the agent who made the affidavit in question was not acquainted with the facts to which he has sworn.

5. The next objection is that the act of April 13, 1894, under which for the first time an independent lien is given to sub-contractors who furnish materials or perform labor at the instance of the principal contractor was invalid, as in conflict with that provision of the Ohio bill of rights, art. 1, constitution of Ohio, which declares that "All men are by nature, free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and seeking and obtaining happiness and safety." The contention is that a law which enabled a principal contractor without the con-

sent of the owner to encumber the owner's property with an
73 independent lien in favor of a sub-contractor furnishing labor or materials for use by the principal contractor on the premises of the owner, without regard to the state of accounts between the owner and such contractor, is a law which so interfered with the owner's liberty of contract as to be in excess of the legislative power. In support of this view the appellant has cited and relied upon the opinion of the supreme court of Ohio, in Lion Hardware Company *v.* Young, *et al.*, 55 Ohio State 423, in which it was held that the extension of the Ohio mechanic's lien law by the act of April 13, 1894, so as to give an independent lien to sub-contractors was null and void as a violation of that liberty of contract declared to be an inalienable right by the Ohio bill of rights.

The decision of the Ohio supreme court was made after the liens here asserted had been perfected and in a cause to which none of the present lienors were parties. The bill of Benjamin F. Jones *et al.*, constituting the joint stock partnership of Jones & Laughlins, Limited, was demurred to by the hotel company for want of equity, and the demurrer was sustained and the bill dismissed, in an opinion delivered by the late District Judge Sage and reported in 79 F. R. 477. From the decree dismissing the bill Jones and others appealed to this court.

Upon that appeal this court, upon full consideration, held:

First. That a decision of the Ohio supreme court is not obligatory upon courts of the United States when thereby the validity of contracts between a citizen of the United States and a citizen of another State is affected, which were executed before there was any judicial construction of the statute or constitution which seemed to authorize the contract in question. The decision thus made was in accordance with the opinion of this court in Louisville Trust Company *v.* City of Cincinnati, 22 C. C. A. 334, where, after stating the general rule to be that a court of the United States would adopt and follow the construction of a State constitution or statute announced by the highest court of the State, we said:

"A well grounded exception exists where contracts and obligations have been entered upon before there has been any judicial construction of the statutes upon which the contract or obligation depends by the highest court of the State whose statute is involved. In such a case, if a court of the United States obtains jurisdiction of a question touching the validity, effect or obligation of such a contract, it will, while leaning to an agreement with the State court, exercise an independent judgment as to the validity and
74 meaning of such contract, although the meaning and validity of such statutes may be an element in the case, and will not be bound to follow opinions of the State court construing such statute if such decisions were rendered after the rights involved in the controversy originated."

Burgess *v.* Seligman, 107 U. S. 20–33; Pleasant Township *v.* Ætna Life Ins. Co., 138 U. S. 67–72.

Second. Upon the former appeal we also held after careful consideration, that "neither upon reason or authority are we able to come to an agreement with the Ohio court," and that "in the exercise of our independent constitutional jurisdiction we must declare our conscientious judgment to be that the Ohio statute was not void, and that complainants are entitled to relief thereunder." The decree of the circuit court was accordingly reversed and the cause remanded for further proceedings. Jones *v.* Great Southern Fire Proof Hotel Company, 30 C. C. A. 108–127. That case was taken by writ of certiorari to the Supreme Court, where it was held that a limited partnership doing business under a firm name and organized under the Pennsylvania act approved June 2, 1874, is not a corporation within the rule that a suit by or against a corporation in a court of the United States is conclusively presumed, for the purposes of the litigation, to be one against or by citizens of the State creating the corporation.

The citizenship of the stockholders in the firm of Jones & Laughlins, Limited, not otherwise appearing than by an averment that the plaintiffs were "members of the limited partnership association * * * organized under the Pennsylvania act" above mentioned, it was held, that it did not sufficiently appear that the plaintiffs were citizens of Pennsylvania. As the jurisdiction depended upon diversity of citizenship the judgments of the circuit court and of this court were reversed and the cause remanded for further proceedings, with directions that the plaintiffs be allowed to amend the pleadings upon the subject of the citizenship of the parties and that the court proceed to a final hearing on the merits if the amendment should show a case within the jurisdiction of the court. Great Southern Fire Proof Hotel Co. *v.* Jones, *et al.*, 177 U. S. 449. The question of the validity of the Ohio statute was not — all considered by the Supreme Court. The pleadings were accordingly amended so as to show a case within the jurisdiction of the court. Upon final hearing on pleadings and proof there was a decree for the com-
75 plainants in that case and a like decree in the other cases for convenience heard on appeal with that case.

For reasons presented in the former opinion of this court, cited above, we hold that the Ohio lien law of April 13, 1894, conferred upon the appellees a valid and enforceable lien, and the several decrees appealed from are accordingly affirmed with costs.

76 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record in the case of Great Southern Fire Proof Hotel Co. *vs.* Benjamin F. Jones *et al.* No. 1034, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and

affixed the seal of said court, at the city of Cincinnati, Ohio, this 18th day of November A. D. 1902.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

77 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the sixth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Great Southern Fire Proof Hotel Company, is appellant, and Benjamin F. Jones, George F. Jones, Jr., Mary F. Laughlin *et al.*, are appellees, No. 1034, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of Ohio, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United
78 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of January, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

Received the foregoing writ this 4th day of February, 1903, and returned the same on the same day pursuant to a stipulation filed in the United States circuit court of appeals for the sixth circuit, February 4th, 1903, which is in the following words:

"United States Circuit Court of Appeals, Sixth Circuit.

GREAT SOUTHERN FIRE PROOF HOTEL Company, Appellant,
vs.
BENJAMIN F. JONES ET AL., Appellees.
} No. 1034. Stipulation.

It is hereby stipulated and agreed between The Great Southern Fire Proof Hotel Company, appellant, by its attorneys, Messrs. John E. Sater and Henry Gumble, and Benjamin F. Jones, *et al.*, appellees, by their attorneys Messrs. Outhwaite, Linn & Thurman, that the certified transcript of the record on file in the Supreme Court of the United States shall be taken as a return to the writ of certiorari issued by the said Supreme Court on the 7th day of January, 1903, and the clerk of the United States circuit court of appeals for the sixth circuit is hereby requested by the parties hereto that a certified copy of this stipulation be sent up by him as his return to said writ of certiorari, which said writ of certiorari was issued in the case of The Great Southern Fire Proof Hotel Company, petitioner, *vs.* Benjamin F. Jones, *et al.*, respondents, by the said the Supreme Court of the United States on said 7th day of January, 1903.

JOHN E. SATER &
HENRY GUMBLE,
Att'ys for the Great Southern Fire Proof Hotel Co.
TALFANT P. LINN,
OUTHWAITE, LINN & THURMAN,
Att'ys for Respondents."

In testimony whereof I have hereunto set my hand and the seal of the United States circuit court of appeals for the sixth circuit, at Cincinnati, Ohio, this 4th day of February, 1903.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk United States Circuit Court of Appeals for the Sixth Circuit.

79 [Endorsed:] File No. 18,745. Supreme Court of the United States. No. 165, October term, 1903. The Great Southern Fire Proof Hotel Co., *vs.* Benjamin F. Jones *et al.* Writ of certiorari. and return Filed Feb'y 11, 1903.